



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE

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**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
INGENCO Wholesale Power, L.L.C.
Registration No. 31047 (Amelia)**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and INGENCO Wholesale Power, LLC (INGENCO) for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations at INGENCO's Amelia facility.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Amelia" means INGENCO's Amelia facility, an electricity and heat production plant located at 20225 Maplewood Rd, Jetersville, Virginia, with Registration No. 31047.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "FCE" means an on-site Full Compliance Evaluation performed by DEQ staff.

7. "INGENCO" means INGENCO Wholesale Power, L.L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. INGENCO is a "person" within the meaning of Va. Code § 10.1-1300.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
10. "PCE" means a partial compliance evaluation by DEQ staff.
11. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
12. "Permit" means the Title V permit to operate an electrical power generation plant at INGENCO's Amelia Facility, which was last amended under the Virginia Air Pollution Control Law and Regulations, and issued to INGENCO on August 14, 2017 (No. 31047).
13. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. INGENCO owns and operates the Amelia facility. Generation of electricity is the primary purpose of the facility.
2. Amelia is the subject of the Permit, which allows the operation of the electrical power generation facility and stipulates the condition under which the facility must be operated.
3. On May 10, 2018, DEQ staff performed an on-site FCE at Amelia. Staff also performed numerous reviews of updated compliance documentation submitted by INGENCO after the FCE. The following paragraphs include staff observations of the violations noted and the correlating legal requirements.
4. A review of the hourly logs showed there were 53 instances during which the inlet charge-air temperature exceeded 140°F for a total of 68 hours between April 2016 and April 2018. INGENCO disagrees with DEQ's observation and asserts that there were only 14 instances totaling approximately 14 hours of temperature exceedances during this time.
5. Condition 2 of the Permit states, "Fuel Burning Equipment Requirements – Limitations - Nitrogen oxides emissions from the 48 dual-fuel diesel engines (A1-H6) shall also be controlled by supplementary inlet charge-air water-to-air cooling and oversized inlet charge and exhaust ducts. The cooling system shall be capable of maintaining an hourly average inlet charge-air temperature not greater than 140°F. Water shall be provided continuously to each engine's inlet charge-air cooler and each engine shall have independent temperature measurement capabilities. The inlet charge-air cooler shall be provided with adequate access for inspection and shall be in operation when any of the 48 dual-fuel diesel engines (A1-H6) are operating. (9 VAC 5-80-110 and Condition 3 of the minor NSR permit dated July 12, 2012)"
6. Condition 15 of the Permit states, "Fuel Burning Equipment Requirements – Limitations - Emissions from the operation of any of the 48 dual-fuel diesel engines (A1-H6) when the facility is operated in either the single fuel or the dual fuel mode shall not exceed the limits specified below:

Particulate Matter	0.3 lb/MMBtu
PM-10	0.3 lb/MMBtu
PM-2.5	0.3 lb/MMBtu
Sulfur Dioxide	0.5 lb/MMBtu
Nitrogen Oxides (as NO ₂)	2.4 lb/MMBtu
Carbon Monoxide	4.3 lb/MMBtu
Volatile Organic Compounds	0.4 lb/MMBtu

Compliance with the lb/MMBtu limits for PM, PM-10, NO_x, CO, and VOC shall be determined by stack testing. All other emission limits are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits shall be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Condition numbers 1 through 7, 10, 11, 12 and 14. (9 VAC 5-80-110 and Condition 22 of the minor NSR permit dated July 12, 2012)”

7. Condition 44 of the Permit states, “Facility Wide Conditions – Limitations - Total emissions from the Facility, whether it is operated in the single fuel or the dual fuel mode, shall not exceed the limits specified below, calculated monthly as the sum of each consecutive 12-month period:

	<u>lb/hour</u>	<u>tons/year</u>
Particulate Matter	51.4	72.6
PM-10	51.4	72.6
PM-2.5	51.4	72.6
Sulfur Dioxide	86.5	30.1
Nitrogen Oxides (as NO ₂)	411.3	240.0
Carbon Monoxide	1045.3	240.0
Volatile Organic Compounds	68.5	96.8

Emissions limits are derived from the estimated overall emission contribution from operating limits. Exceedance of the operating limits shall be considered credible evidence of the exceedance of emission limits. Compliance with these emission limits may be determined as stated in Condition numbers 1 through 7, 10, 11, 12 and 14. (9 VAC 5-80-110 and Condition 23 of the minor NSR permit dated July 12, 2012)”

8. INGENCO reported continuous compliance for all conditions of the Permit on the August 10th, 2017 and February 8th, 2018 Semi-Annual Monitoring Reports. Review of the inlet charge-air temperature indicate continuous compliance was not achieved.
9. Condition 57 of the Permit states, “General Conditions – Recordkeeping and Reporting - The permittee shall submit the results of monitoring contained in any applicable requirement to the Department no later than March 1 and September 1 of each calendar year. This report must be signed by a responsible official, consistent with 9 VAC 5-80-80 G, and shall include:
- The time period included in the report. The time periods to be addressed are January 1 to June 30 and July 1 to December 31.
 - All deviations from permit requirements. For purpose of this permit, deviations include, but are not limited to:

- (1) Exceedance of emissions limitations or operational restrictions;
- (2) Excursions from control device operating parameter requirements, as documented by continuous emission monitoring, periodic monitoring, or Compliance Assurance Monitoring (CAM) which indicates an exceedance of emission limitations or operational restrictions; or,
- (3) Failure to meet monitoring, recordkeeping, or reporting requirements contained in this permit.

c. If there were no deviations from permit conditions during the time period, the permittee shall include a statement in the report that “no deviations from permit requirements occurred during this semi-annual reporting period. (9 VAC 5-80-110)”

10. INGENCO reported continuous compliance for all conditions of the Permit on the February 8th, 2018 Annual Compliance Certification for calendar year 2017. Review of the inlet charge-air temperature records indicate continuous compliance was not achieved.
11. Condition 58 of the Permit states, “General Conditions – Annual Compliance Certification - Exclusive of any reporting required to assure compliance with the terms and conditions of this permit or as part of a schedule of compliance contained in this permit, the permittee shall submit to EPA and the Department no later than March 1 each calendar year a certification of compliance with all terms and conditions of this permit including emission limitation standards or work practices for the period ending December 31. The compliance certification shall comply with such additional requirements that may be specified pursuant to §114(a)(3) and §504(b) of the federal Clean Air Act. The permittee shall maintain a copy of the certification for five (5) years after submittal of the certification. This certification shall be signed by a responsible official, consistent with 9 VAC 5-80-80 G, and shall include:
 - a. The time period included in the certification. The time period to be addressed is January 1 to December 31.
 - b. The identification of each term or condition of the permit that is the basis of the certification.
 - c. The compliance status.
 - d. Whether compliance was continuous or intermittent, and if not continuous, documentation of each incident of non-compliance.
 - e. Consistent with subsection 9 VAC 5-80-110 E, the method or methods used for determining the compliance status of the source at the time of certification and over the reporting period.
 - f. Such other facts as the permit may require to determine the compliance status of the source.

g. One copy of the annual compliance certification shall be submitted to EPA in electronic format only. The certification document should be sent to the following electronic mailing address: R3_APD_Permits@epa.gov (9 VAC 5-80-110)”

12. On July 30, 2018, DEQ staff reviewed the July 27, 2018 Semi-Annual Monitoring Report submitted for the first half of calendar year 2018. Additional compliance documentation was submitted for this report on August 28 and September 6, 2018. The following paragraphs contain the observations made and the applicable legal requirements.
13. Records of the clock hour averages for the inlet charge-air contained data that confirmed there were 71 instances in which the calculated hourly average exceeded 140°F. The dates on which these occurred were January 1 through 7, February 24, April 6 and June 10, 2018.
14. The language for Condition 2 of the Permit, regarding inlet charge-air temperature, is included in paragraph C.5.
15. INGENCO reported six deviations for conditions of the Permit in the July 27, 2018 Semi-Annual Monitoring Report. Review of the inlet charge-air temperature records confirm that there were 71 instances where compliance was not achieved.
16. The language for Condition 57 of the Permit, regarding Semi Annual Monitoring Reports, is included in paragraph C.9.
17. On August 13, 2018, DEQ issued Notice of Violation No. APRO000952-001 to INGENCO for the violations noted in paragraphs C.3. through C.16. On September 6, 2018, DEQ and INGENCO staff met to discuss the violations noted and any corrective actions that had been performed or were planned. INGENCO agreed to submit additional documentation regarding these corrective actions.
18. On September 28, 2018 DEQ staff reviewed the corrective action documentation submitted in response to the NOV. The following paragraphs contain the observations made and the applicable legal requirements.
19. Inlet charge-air temperature data was calculated for every instance that exceeded 140°F. 71 instances were confirmed for the dates of January 1 through 7, February 24, April 6 and June 10, 2018.
20. The language for Condition 2 of the Permit, regarding inlet charge-air temperature and related emission limits, are included in paragraph C.5.
21. The violations of Semi-Annual Monitoring Reports and Annual Compliance Certifications noted in paragraphs C.8. through C.16. were confirmed.

22. The language for Conditions 57 and 58 of the Permit, regarding Semi-Annual Monitoring Reports and Annual Compliance Certifications, are included in paragraphs C.9 and C.11.
23. On January 16, 2019 DEQ staff reviewed additional compliance documentation submitted in response to the NOV. The violations previously noted were confirmed.
24. On March 16, 2019 DEQ staff reviewed the 2018 Annual Compliance Certification submitted by INGENCO. It did not include the deviations noted by DEQ staff for the first half of 2018 and documented in the July 30, 2018 SAMR inspection report.
25. The language for Condition 58 of the Permit, regarding Annual Compliance Certifications, is included in paragraph C.12.
26. On May 16, 2019 DEQ staff reviewed additional compliance documentation submitted in response to the NOV. The violations previously noted were confirmed.
27. On July 31, 2020, DEQ staff reviewed compliance documentation submitted for evaluation and inclusion in the 2020 Full Compliance Evaluation for Amelia. Staff discovered that the boiler referred to as B1 in the Permit was operated on February 27, 2019 and an opacity observation was not performed or recorded.
28. Condition 29 of the Permit states, "Once per month, the permittee shall conduct an observation of the presence of visible emissions from the operating boiler (B1)."
29. On December 18, 2020, INGENCO submitted documentation confirming that only 56% of the engines were used during the 2017 and 2018 operational periods. Accordingly, violations related to Conditions 15 and 44, listed in paragraphs C.6 and C.7., have been resolved.
30. Va. Code §10.1-1322 states that failure to meet conditions of a permit is considered a violation of the Virginia Air Pollution Control Law.
31. 9VAC5-80-260 and 9VAC5-80-1210(I) require compliance with all terms and conditions of Title V operating permits and permits for stationary sources respectively.
32. Based on the results of the above mentioned PCEs, FCEs, meetings and submitted documentation, the Board concludes that INGENCO has violated conditions 2, 29, 57 and 58 of the Permit, Va. Code § 10.1-1322 and 9VAC5-80-260 and -1210 of the Virginia Air Pollution Control Law and Regulations as described above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders INGENCO, and INGENCO agrees, to:

1. Perform the actions described in Appendix A of this Order; and

2. Pay a civil charge of \$49,000.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

INGENCO shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, INGENCO shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of INGENCO for good cause shown by INGENCO, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, INGENCO admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact, and conclusions of law in this Order.
4. INGENCO consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. INGENCO declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by INGENCO to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. INGENCO does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. INGENCO shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. INGENCO shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. INGENCO shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and INGENCO. Nevertheless, INGENCO agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after INGENCO has completed all of the requirements of the Order;
- b. INGENCO petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to INGENCO.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve INGENCO from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by INGENCO and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of INGENCO certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind INGENCO to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of INGENCO.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, INGENCO voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2021.

James J. Golden, Regional Director
Department of Environmental Quality

INGENCO Wholesale Power, L.L.C. voluntarily agrees to the issuance of this Order.

Date: 6-23-21 By: [Signature], SVP/GM
(Person) (Title)
INGENCO Wholesale Power, L.L.C.

Commonwealth of Virginia

City/County of Henrico

The foregoing document was signed and acknowledged before me this 23rd day of June, 2021, by Brad Burmaster, who is SVP/GM of INGENCO Wholesale Power, L.L.C., on behalf of the corporation.

[Signature]
Notary Public

276152
Registration No.

My commission expires: 2/28/2023

Notary seal



APPENDIX A SCHEDULE OF COMPLIANCE

INGENCO agrees to perform the following:

1. By August 1, 2021, submit new Standard Operating Procedures for recording and evaluating inlet-charge air temperature hourly calculations for review.
2. By December 31, 2021, Submit copies of Visible Emissions Evaluations for boiler B1, located at Amelia, and boiler B1, located at the Chester facility, registration number 52037.

DEQ Contact

Unless otherwise specified in this Order, INGENCO shall submit all requirements of Appendix A of this Order to:

David Robinett, Air Compliance Manager
VA DEQ – Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060
804-527-5128
david.robinett@deq.virginia.gov